

**The London Borough of Barnet
(West Hendon Regeneration Area)
Compulsory Purchase Order No 1 2014**

PROMOTERS' POSITION STATEMENT ON DISCLOSURE

1. This Position Statement is made by the London Borough of Barnet ("the Council") and the Barratt Metropolitan Limited Liability Partnership (together "the Promoters") in advance of the inquiry into the London Borough of Barnet (West Hendon Regeneration Area) Compulsory Purchase Order No 1 2014 ("the Order") which commences on 20 January 2015.
2. Three of those who have submitted Statements of Evidence (Jasmin Parsons, Derrick Chung, Mr Humayune Khalick and Cllr Adam Langleben) have requested disclosure of information relating to the viability of the Regeneration Project. Jasmin Parsons' 31.12.14 "Addendum Statement" states that:

"2. The London Borough of Barnet and the Partners has repeatedly refused to release any viability studies on the West Hendon regeneration scheme even though we have asked them on more than one occasion.

3. The reason for non-release of documentation has always been one of alleged commercial confidentiality.

4. Because the scheme has now been referred for Public Inquiry we believe that it is in the residents' and the public's interest in releasing such documentation as it now outweighs any corporate concerns around commercial confidentiality, especially as it is pertaining to public land, public housing and the public purse.

5. We along with the councillors and decision makers are unable to fully critique the regeneration proposal without access to this information.

6. We also believe that it is a piece of evidence worthy of consideration by the Inspector when making any ruling.

[...]

Therefore, I respectfully ask that the Inspector to ask the London Borough of Barnet to release their affordable housing viability assessments of the West Hendon regeneration scheme in a timely manner to allow proper scrutiny before the Public Inquiry."

Cllr Adam Langleben's 31.12.14 Addendum is in the same terms. Derrick Cheung's second Statement (02.01.15) asks the Inspector to consider "the decision by an ICO review regarding the decision to release the viability assessment report of another regeneration estate in London". Mr Khalick's Proof of Evidence (paras 3, 5) requests the Inspector to direct the Council to produce "a viability study that is awaiting an answer to our FOI request" (as to which, see para 5 below).

3. This Position Statement sets out the Promoters' response to these requests.

Legal Framework

4. The Inspector has no powers to direct the disclosure of documents under either the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. Indeed, the First Tier Tribunal made clear at §47 of its decision in *Southwark v The Information Commissioner* EA/2013/0162 that the principles for disclosure in a CPO inquiry operate “irrespective” of those under the 2004 Regulations.
5. On 7 January 2015 the Council received a request from Mr Khalick for the disclosure of “the most up to date viability report by Barratt Metropolitan or any of the partners within this joint venture partnership which determines the percentage of the properties ... which will be affordable”, and for “any reports which London Borough of Barnet have carried out to assess viability themselves”. This request is being treated by the Council as having been made under the 2000 Act and the 2004 Regulations, and will be dealt with accordingly.
6. The Inspector does have the power to require the production of any documents by summons “which relate to any matter in question at the inquiry”: see section 5(2) of the Acquisition of Land Act 1981, and section 250(2) of the Local Government Act 1972. In considering the exercise of that power, the Inspector should apply the same approach as the courts, which is to consider “whether, in the given case disclosure appears to be necessary in order to resolve the matter fairly and justly”: see *Tweed v Parades Commission* [2007] 1 AC 650, Lord Bingham at §3.
7. Considering that test, Patterson J said in *R (Perry) v Hackney* [2014] EWHC 1721 (Admin) at §17 that:

“It is important to consider what is necessary. The problems of confidentiality are well known in the area of financial viability. It is important not to allow a party to go on a ‘fishing expedition’. That is particularly so here. The claimant has produced no expert evidence of his own to suggest that the viability assessment submitted is in error.”

“Matters in question” at this Inquiry

8. In this case, planning permission was granted under reference H/01054/13 on 20 November 2013 [CDB.37]. Viability information was submitted in relation to the issue of the quantum and type of affordable housing provision for the Regeneration Project, including Phase 3. This issue was given full consideration, and was resolved, by the Council in its decision to grant planning permission. The application was not called in by the Mayor of London or by the Secretary of State for determination by them, nor was the permission subject to any legal challenge. The time for making any such challenge has long passed. It is not the purpose or function of this inquiry to re-examine issues that have already been

addressed through the planning process.

9. Rather, the function of the Inspector and the Secretary of State is to consider whether the Order should be confirmed. The considerations relevant to that question are set out in section 226 of the Town and Country Planning Act 1990, and at greater length in ODPM Circular 06/2004 (particularly Appendix A). There is no reason given in the requests for disclosure that even seeks to relate the requests to the question of whether the Order should be confirmed.
10. It is nevertheless to be noted that, as part of its decision on the planning application, the Council required a mechanism to be included the s.106 agreement associated with the 2013 permission which requires additional affordable housing to be provided if the viability of subsequent phases of the Regeneration Project should improve: see Matt Calladine's proof of evidence [MCa:p.36] in response to objection theme 17, and CDB.36 Schedule B Part 2. The viability and level of affordable housing will be reviewed before the submission of each subsequent reserved matters application for Phases 4, 5 and 6.
11. However, viability can be relevant to the Inspector and Secretary of State's consideration of the CPO, because it may go to the question of whether there is a reasonable prospect that the scheme will proceed: see Circular 06/2004, Appendix A, para 16(iii). This issue is addressed in the Promoters' evidence: see the proofs of Martin Cowie at [MCo:2.50], and Matt Calladine at [MCa:7.13-7.21]. None of the objectors' evidence seeks to assert or to demonstrate that the Regeneration Project, and Phases 3b and 3c in particular, is unlikely to proceed should the Order be confirmed.

Conclusions

12. The Promoters submit that:
 - (1) The "viability studies" requested by the Objectors do not "relate to any matter in question at the inquiry". On the contrary, project viability is not in issue.
 - (2) The Objectors' requests are precisely the "fishing expedition" warned against by Patterson J in *R (Perry) v Hackney* [2014] EWHC 1721 (Admin). That is particularly so since they have produced no evidence to suggest that, for reasons of viability, the Regeneration Project is unlikely to proceed if the Order is confirmed.
 - (3) The adequacy of affordable housing provision for the Regeneration Project, including Phase 3, has already been determined through the planning application process and the grant of planning permission. It is not a matter to be determined through the current inquiry process.

- (4) Furthermore, the viability studies requested are commercially confidential, and contain commercially sensitive information. The Promoters would therefore in any event resist disclosure on that ground. In the circumstances of this case, it would not be in the public interest to order disclosure of such material.
13. In sum, it is not necessary for the Inspector or the Secretary of State to see any viability studies in order (respectively) to recommend and decide whether the Order should be confirmed. It also follows that Mr Khalick's request (Proof of Evidence para 4) for a "stay of proceedings" until the viability study he has requested "can be considered fully" is wholly unjustified, and will be strongly resisted by the Council.
14. The Promoters' position therefore is that there is no justification for the exercise of the Inspector's powers under section 5(2) of the Acquisition of Land Act 1981 and section 250(2) of the Local Government Act 1972 to require the disclosure of viability studies relating to the Regeneration Project.

12th January 2015